January 12, 2016

Erik Jacobson  
Director, Regulatory Relations  
Pacific Gas and Electric Company  
77 Beale Street, Mail Code B10C  
P.O. Box 770000  
San Francisco, California 94177

SUBJECT: Proposed Model Protective Order and Model Nondisclosure Agreement  
Pursuant to Resolution E-4468 and Decision 11-07-028

Dear Mr. Jacobson:

Advice Letter 4735-E is effective as of November 2, 2015.

Sincerely,

Edward Randolph  
Director, Energy Division
November 2, 2015

Advice 4735-E
(Pacific Gas and Electric Company U 39-E)

Advice 3304-E
(Southern California Edison Company U 338-E)

Advice 2808-E
(San Diego Gas & Electric Company U 902-E)

Public Utilities Commission of the State of California

Subject: Proposed Model Protective Order and Model Nondisclosure Agreement Pursuant to Resolution E-4468 and Decision 11-07-028

Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E) (jointly “Utilities”) submit this Tier 1 advice letter as required in Ordering Paragraph (OP) 2 of the California Public Utilities Commission’s (Commission or CPUC) Resolution E-4468 (Resolution). This advice letter includes a proposed, updated version of the Model Protective Order (MPO) and the Model Nondisclosure Agreement (MNDA) consistent with the Resolution.

On November 10, 2011, the Utilities submitted the MPO and MNDA pursuant to the Commission’s direction in Decision (D.)11-07-028. On October 1, 2015, the Commission approved the Utilities’ proposed MPO and MNDA in the Resolution, with certain limited modifications.1 Specifically, the Resolution directed the Utilities to modify the approved documents so that the proposed MPO and MNDA explicitly state “the party seeking confidentiality bears the burden of proving such entitlement, and that merely marking records as [“confidential,” “market sensitive” or “protected material”] is insufficient to meet that burden.”2 OP 2 of the Resolution directed the Utilities to submit the revised proposed MPO and MNDA in a Tier 1 Advice Letter within 30 days of the effective date of the Resolution.

1 Resolution, OP 1.
2 Id., Finding 11.
In addition to complying with the Resolution, the Utilities have updated the list of Commission confidentiality directives appearing in both the MPO and MNDA to reference D.14-10-033 in order to provide a comprehensive list. The regulations of the California Air Resources Board prohibit disclosure of auction-related information in most circumstances. In issuing D.14-10-033, the Commission expanded the scope of D.06-06-066 (governing the confidentiality of certain electric procurement data and information submitted in Commission proceedings) to include confidentiality protocols for cap-and-trade related data that is market sensitive and to include the confidentiality of auction participation information that may be the subject of disclosure in Commission proceedings.3

Attached to this advice letter are four documents. Appendix A is a clean copy of the updated MPO and Appendix B is a redline version comparing the updated MPO to the MPO that was attached to the Utilities’ November 10, 2011 Advice Letter.4 Appendix C is a clean copy of the MNDA and Appendix D is a redline version comparing the updated MNDA to the MNDA attached to the November 10, 2011 Advice Letter.

**Protests**

Anyone wishing to protest this filing may do so by letter sent via U.S. mail, facsimile or E-mail, no later than November 23, which is 21 days after the date of this filing.5 Protests must be submitted to:

CPUC Energy Division  
ED Tariff Unit  
505 Van Ness Avenue, 4th Floor  
San Francisco, California 94102  

Facsimile: (415) 703-2200  
E-mail: EDTariffUnit@cpuc.ca.gov

Copies of protests also should be mailed to the attention of the Director, Energy Division, Room 4004, at the address shown above.

The protest shall also be sent to PG&E, SCE, and SDG&E either via E-mail or U.S. mail (and by facsimile, if possible) at the addresses shown below on the same date it is mailed or delivered to the Commission:

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3 D.14-10-033, Attachment A.  
4 The Utilities’ November 11, 2011 Advice Letter referenced here is catalogued as PG&E Advice 3943-E, SCE Advice 2653-E, and SDG&E Advice 2301-E.  
5 The Utilities request to extend the protest period by one additional day because twenty days following the submission date of this advice letter is Sunday, November 22, 2015.
Erik Jacobson  
Director, Regulatory Relations  
c/o Megan Lawson  
Pacific Gas and Electric Company  
77 Beale Street, Mail Code B10C  
P.O. Box 770000  
San Francisco, California  94177  
Facsimile: (415) 973-7226  
E-mail: PGETariffs@pge.com

Southern California Edison Company  
Attention: Russell G. Worden  
Managing Director, State Regulatory Operations  
8631 Rush Street  
Rosemead, California  91770  
Facsimile: (626) 302-4829  
E-mail: AdviceTariffManager@sce.com

Michael R. Hoover  
Director, State Regulatory Affairs  
c/o Karyn Gansecki  
Southern California Edison Company  
601 Van Ness Avenue, Suite 2030  
San Francisco, California  94102  
Facsimile: (415) 929-5544  
E-mail: Karyn.Gansecki@sce.com

San Diego Gas & Electric Company  
Attention: Megan Caulson  
Regulatory Tariff Manager  
8330 Century Park Court, Room 31F  
San Diego, CA 92123-1548  
E-mail: mcaulson@semprautilities.com

Any person (including individuals, groups, or organizations) may protest or respond to an advice letter (General Order 96-B, Section 7.4). The protest shall contain the following information: specification of the advice letter protested; grounds for the protest; supporting factual information or legal argument; name, telephone number, postal address, and (where appropriate) e-mail address of the protestant; and statement that the protest was sent to the utility no later than the day on which the protest was submitted to the reviewing Industry Division (General Order 96-B, Section 3.11).
Effective Date

The Utilities request that this Tier 1 advice filing become effective November 2, 2015, which is the date of filing.

Notice

In accordance with General Order 96-B, Section IV, a copy of this advice letter is being sent electronically and via U.S. mail to parties shown on the attached list and the parties on the service lists for R.05-06-040. Address changes to the General Order 96-B service list should be directed to PG&E at email address PGETariffs@pge.com. For changes to any other service list, please contact the Commission’s Process Office at (415) 703-2021 or at Process_Office@cpuc.ca.gov. Send all electronic approvals to PGETariffs@pge.com. Advice letter filings can also be accessed electronically at: http://www.pge.com/tariffs/.

/S/
Erik Jacobson
Director, Regulatory Relations

Attachments

Appendix A: Updated Model Protective Order (clean version)
Appendix B: Updated Model Protective Order (redline version)
Appendix C: Updated Non-Disclosure Agreement (clean version)
Appendix D: Updated Non-Disclosure Agreement (redline version)

cc: Service List R.05-06-040
Company name/CPUC Utility No. Pacific Gas and Electric Company (ID U39 E)

<table>
<thead>
<tr>
<th>Utility type:</th>
<th>Contact Person: Jennifer Wirowek</th>
</tr>
</thead>
<tbody>
<tr>
<td>✓ ELC</td>
<td>Phone #: (415) 973-1419</td>
</tr>
<tr>
<td>☐ GAS</td>
<td>E-mail: <a href="mailto:J6ws@pge.com">J6ws@pge.com</a> and <a href="mailto:PGETariffs@pge.com">PGETariffs@pge.com</a></td>
</tr>
<tr>
<td>☐ PLC</td>
<td></td>
</tr>
<tr>
<td>☐ HEAT</td>
<td></td>
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<tr>
<td>☐ WATER</td>
<td></td>
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</tbody>
</table>

EXPLANATION OF UTILITY TYPE

ELC = Electric      GAS = Gas
PLC = Pipeline      HEAT = Heat
WATER = Water

Advice Letter (AL) #: 4735-E, et al.
Subject of AL: Proposed Model Protective Order and Model Nondisclosure Agreement Pursuant to Resolution E-4468 and Decision 11-07-028

Keywords (choose from CPUC listing): Compliance

AL filing type: ☐ Monthly ☐ Quarterly ☐ Annual ☑ One-Time ☐ Other
If AL filed in compliance with a Commission order, indicate relevant Decision/Resolution #: D.11-07-028, Resolution E-4468

Does AL replace a withdrawn or rejected AL? If so, identify the prior AL: No
Summarize differences between the AL and the prior withdrawn or rejected AL:

Is AL requesting confidential treatment? If so, what information is the utility seeking confidential treatment for: No
Confidential information will be made available to those who have executed a nondisclosure agreement: ☓ Yes ☐ No
Name(s) and contact information of the person(s) who will provide the nondisclosure agreement and access to the confidential information: N/A

Resolution Required? ☐ Yes ☑ No
Requested effective date: November 2, 2015
No. of tariff sheets: N/A
Estimated system annual revenue effect (%): N/A
Estimated system average rate effect (%): N/A

When rates are affected by AL, include attachment in AL showing average rate effects on customer classes (residential, small commercial, large C/I, agricultural, lighting).
Tariff schedules affected: N/A
Service affected and changes proposed: N/A
Pending advice letters that revise the same tariff sheets: N/A

Protests, dispositions, and all other correspondence regarding this AL are due no later than 21 days after the date of this filing, unless otherwise authorized by the Commission, and shall be sent to:

California Public Utilities Commission
Energy Division
EDTariffUnit
505 Van Ness Ave., 4th Flr.
San Francisco, CA 94102
E-mail: EDTariffUnit@cpuc.ca.gov

Pacific Gas and Electric Company
Attn: Erik Jacobson
Director, Regulatory Relations
c/o Megan Lawson
77 Beale Street, Mail Code B10C
P.O. Box 770000
San Francisco, CA 94177
E-mail: PGETariffs@pge.com

1 The Utilities request to extend the protest period by one additional day because twenty days following the submission date of this advice letter is Sunday, November 22, 2015.
Appendix A

Updated Model Protective Order

(clean version)
[MODEL] PROTECTIVE ORDER

1. Scope. This Protective Order shall govern access to and the use of Protected Materials, produced by, or on behalf of, any Disclosing Party (as defined in Paragraph 2 below) in this proceeding.

2. Definitions

In addition to the terms defined and capitalized in other sections of this Protective Order, the following terms are defined for the purposes of this Protective Order:

A. For purposes of this Protective Order, the term “Protected Materials” means: (i) trade secret, market sensitive, or other confidential and/or proprietary information as determined by the Disclosing Party in accordance with the provisions of Decision (“D.”) 06-06-066 and subsequent decisions, including D.14-10-033 which governs the treatment of market sensitive greenhouse gas data and information, General Order 66-C, Public Utilities Code section 454.5(g), or any other right of confidentiality provided by law; or (ii) any other materials that are made subject to this Protective Order by the Assigned Administrative Law Judge (“Assigned ALJ”), Law and Motion Administrative Law Judge (“Law and Motion ALJ”), Assigned Commissioner, the California Public Utilities Commission (“Commission”), or any court or other body having appropriate authority. Protected Materials also include memoranda, handwritten notes, spreadsheets, computer files and reports, and any other form of information (including information in electronic form) that copies, discloses, incorporates, includes or
compiles other Protected Materials or from which such materials may be derived (except that any
derivative materials must be separately shown to be confidential). Protected Materials do not
include: (i) any information or document contained in the public files of the Commission or any
other state or federal agency, or in any state or federal court; or (ii) any information that is public
knowledge, or which becomes public knowledge, other than through disclosure in violation of
this Protective Order or any other nondisclosure agreement or protective order.

B. The term “redacted” refers to situations in which Protected Material in a
document, whether the document is in paper or electronic form, have been covered, blocked out,
or removed.

C. The term “Disclosing Party” means a party who initially discloses any
specified Protected Material in this proceeding.

D. The term “Requesting Party” means any party that is requesting receipt of
Protected Material from a Disclosing Party.

E. The term “Party” refers to the Requesting Party or the Disclosing Party
and the term “Parties” refers to both the Requesting Party and the Disclosing Party.

F. The term “Market Participant” refers to a Requesting Party that is:

1) A person or entity, or an employee of an entity, that engages in the
wholesale purchase, sale or marketing of energy or capacity, or the
bidding on or purchasing of power plants, or bidding on utility
procurement solicitations, or consulting on such matters, subject to the
limitations in 3) below.

2) A trade association or similar organization, or an employee of such
organization,
   a) whose primary focus in proceedings at the Commission is to
advocate for persons/entities that purchase, sell or market
energy or capacity at wholesale; bid on, own, or purchase
power plants; or bid on utility procurement solicitations; or
   b) a majority of whose members purchase, sell or market energy
or capacity at wholesale; bid on, own, or purchase power plants; or bid on utility procurement solicitations; or

c) formed for the purpose of obtaining Protected Materials; or
d) controlled or primarily funded by a person or entity whose primary purpose is to purchase, sell or market energy or capacity at wholesale; bid on, own, or purchase power plants; or bid on utility procurement solicitations.

3) A person or entity that meets the criteria of 1) above is not a Market Participant for purpose of access to Protected Materials unless the person/entity seeking access to Protected Materials has the potential to materially affect the price paid or received for electricity if in possession of such information. An entity will be considered not to have such potential if:

a) the person or entity’s participation in the California electricity market is de minimis in nature. In the resource adequacy proceeding (R.05-12-013) it was determined in D.06-06-064 § 3.3.2 that the resource adequacy requirement should be rounded to the nearest megawatt (MW), and load serving entities (LSEs) with local resource adequacy requirements less than 1 MW are not required to make a showing. Therefore, a de minimis amount of energy would be less than 1 MW of capacity per year, and/or an equivalent of energy; and/or

b) the person or entity has no ability to dictate the price of electricity it purchases or sells because such price is set by a process over which the person or entity has no control, i.e., where the prices for power put to the grid are completely overseen by the Commission, such as subject to a standard offer contract or tariff price. A person or entity that currently has no ability to dictate the price of electricity it purchases or sells under this section, but that will have such ability within one year because its contract is expiring or other circumstances are changing, does not meet this exception; and/or

c) the person or entity is a cogenerator that consumes all the power it generates in its own industrial and commercial processes, if it can establish a legitimate need for Protected Materials.
G. The term “Non-Market Participant” refers to a Requesting Party that does not meet the definition of Market Participant. The California Independent System Operator is deemed a Non-Market Participant for purposes of this Protective Order.

H. “Reviewing Representatives” are limited to person(s) designated in accordance with Paragraph 5 who meet the following criteria:

1) Reviewing Representatives may not currently be engaged in: (a) a transaction for the purchase, sale, or marketing at wholesale of electrical energy or capacity or natural gas (or the direct supervision of any employee(s) engagement in such a transaction); (b) the bidding on or purchasing of power plants (or the direct supervision of any employee(s) engagement in such a transaction); or (c) knowingly providing electricity or gas marketing consulting or advisory services to others in connection with a transaction for the purchase, sale, or marketing at wholesale of electrical energy or capacity or natural gas or the bidding on or purchasing of power plants (or the direct supervision of any employee(s) engagement in such a transaction or consulting).

2) Reviewing Representatives may not be an employee of a Market Participant. If the Market Participant or Non-Market Participant chooses to retain outside attorneys, consultants, or experts in the same law firm or consulting firm to provide advice in connection with marketing activities, then the attorney, consultant, or expert serving as a Reviewing Representative must be separated by an ethics wall consistent with the ethics wall requirements in D.11-07-028, as that decision may be subsequently modified or changed by the Commission, from those in the firm who are involved in wholesale commercial dealings.

3) Reviewing Representatives shall use Protected Materials only for the purpose of participating in the Commission proceeding in which they received the information.

4) Reviewing Representatives are permitted to participate in regulatory proceedings on behalf of Market Participants and Non-Market Participants.

5) All Reviewing Representatives are required to execute the Nondisclosure Certificate attached to this Protective Order and are bound by the terms of this Protective Order.
I. The term “Authorized Reviewers” refers to: (1) a Requesting Party that is a Non-Market Participant; or (2) a Reviewing Representative of a Requesting Party. A Requesting Party that is a Market Participant is not an Authorized Reviewer but it may designate a Reviewing Representative in accordance with Paragraph 5.

J. The term “Nondisclosure Certificate” refers to the Nondisclosure Certificate attached as Appendix A.


When filing or providing in discovery any documents or items containing Protected Materials, a party shall physically mark such documents (or in the case of non-documentary materials such as computer diskettes, on each item) as “PROTECTED MATERIALS SUBJECT TO PROTECTIVE ORDER,” or with words of similar import as long as one or more of the terms “Protected Materials” or “Protective Order” is included in the designation to indicate that the materials in question are Protected Materials. All materials so designated shall be treated as Protected Materials unless and until: (a) the designation is withdrawn pursuant to Paragraph 14 hereof; (b) an Assigned ALJ, Law and Motion ALJ, Assigned Commissioner, or the Commission makes a determination that: (i) the document does not contain Protected Materials or does not warrant confidential treatment or (ii) denies a motion to file the document under seal; or (c) the document or information becomes public knowledge, other than through disclosure in violation of this Protective Order or any other nondisclosure agreement or protective order. However, the Disclosing Party has the burden of showing that the documents are Protected Materials, and merely marking a document “Protected Materials” is insufficient to meet that burden.

All documents containing Protected Materials that are tendered for filing with the Commission shall be placed in sealed envelopes or otherwise appropriately protected and shall be tendered with a motion to file the document under seal pursuant to Rule 11.4 of the
Commission’s Rules of Practice and Procedure. All documents containing Protected Materials that are served on parties in a proceeding shall be placed in sealed envelopes or otherwise appropriately protected and shall be endorsed to the effect that they are served under seal pursuant to this Protective Order. Such documents shall only be served upon Authorized Reviewers and persons employed by or working on behalf of the Commission. Service upon Authorized Reviewers and persons employed by or working on behalf of the Commission may either be: (a) by electronic mail in accordance with the procedures adopted in this proceeding; (b) by facsimile; or (c) by overnight mail or messenger service. Whenever service of a document containing Protected Materials is made by overnight mail or messenger service, the Assigned ALJ shall be served with such document by the same means and at the same time.

4. **Redaction of Documents.** Whenever a Party files, serves or provides in discovery a document that includes Protected Materials (including but not limited to briefs, testimony, exhibits, and responses to data requests), such Party shall also prepare a redacted version of such document. The redacted version shall enable persons familiar with this proceeding to determine with reasonable certainty the nature of the data that has been redacted and where the redactions occurred. The redacted version of a document to be filed shall be served on all persons on the service list, and the redacted version of a discovery document shall be served on all persons entitled thereto.

5. **Designation of Reviewing Representatives.** The Requesting Party shall provide written notice identifying its proposed Reviewing Representative(s) to the Disclosing Party before the Disclosing Party provides any Protected Materials to the Requesting Party’s Authorized Reviewers. The written notice shall include the information identified in this paragraph. If the Requesting Party decides to designate any additional Reviewing Representative(s) after the Requesting Party’s Authorized Reviewers receive Protected
Materials, the Requesting Party shall identify the additional proposed Reviewing Representative(s) to the Disclosing Party before the Requesting Party provides Protected Materials to the additional Reviewing Representative(s). Within five (5) business days after receiving written notice of the identity of any Reviewing Representative, the Disclosing Party may provide the Requesting Party with a written objection to a specific Reviewing Representative stating the grounds for the objection. Any dispute concerning whether an identified person or entity is an appropriate Reviewing Representative shall be resolved through the dispute resolution procedures in Paragraph 11 of this Protective Order. If a Disclosing Party objects to a specific Reviewing Representative within five (5) business days after the Reviewing Representative is identified, the Parties shall not provide any Protected Materials to the disputed Reviewing Representative until the Parties are able to resolve the dispute consistent with the dispute resolution procedures in Paragraph 11. Failure by the Disclosing Party to object within five (5) business days does not waive the Disclosing Party’s right to later object to the Reviewing Representative, even if Protected Materials has already been disclosed. However, further disclosure of Protected Materials would be stayed until the parties are able to resolve the dispute consistent with the dispute resolution procedures in Paragraph 11.

Reviewing Representative(s) have a duty to disclose to the Disclosing Party any potential conflict of interest that puts the Reviewing Representative in violation of D.06-12-030, as modified by subsequent decisions of the Commission. A resume or curriculum vitae is reasonable disclosure of such potential conflicts, and should be the default evidence provided in most cases.

6. **Nondisclosure Certificates.** A Reviewing Representative shall not inspect, participate in discussions regarding, or otherwise be granted access to, Protected Materials unless and until he or she has first completed and executed a Nondisclosure Certificate, attached hereto
as Appendix A, and delivered the signed Nondisclosure Certificate to the Disclosing Party. The Disclosing Party shall retain the executed Nondisclosure Certificates pertaining to the Protected Materials it has disclosed and shall promptly provide copies of the Nondisclosure Certificates to Commission Staff upon request.

7. **Access to Protected Materials and Use of Protected Materials.** Subject to the terms of this Protective Order, Authorized Reviewers shall be entitled to access any Protected Materials and may make copies of Protected Materials, but such copies become Protected Materials. Authorized Reviewers may make notes of Protected Materials, which shall be treated as Protected Materials if such notes disclose any Protected Materials. Protected Materials obtained by a Party in this proceeding may also be requested by that Party in a subsequent Commission proceeding, subject to the terms of any nondisclosure agreement or protective order governing that subsequent proceeding, without constituting a violation of this Protective Order.

8. **Maintaining Confidentiality of Protected Materials.** Each Authorized Reviewer shall treat Protected Materials as confidential in accordance with this Protective Order and the Nondisclosure Certificate. Protected Materials shall not be used except as necessary for participation in this proceeding, and shall not be disclosed in any manner to any person except: (i) Authorized Reviewers; (ii) an Authorized Reviewer’s employees and administrative personnel, such as clerks, secretaries, and word processors, to the extent necessary to assist the Authorized Reviewer, provided that they shall first ensure that such personnel are familiar with the terms of this Protective Order and have signed a Nondisclosure Certificate; and (iii) persons employed by or working on behalf of the Commission. Authorized Reviewers shall adopt suitable measures to maintain the confidentiality of Protected Materials they have obtained pursuant to this Protective Order, and shall treat such Protected Materials in the same manner as they treat their own most highly confidential information.
Authorized Reviewers shall be liable for any unauthorized disclosure or use by themselves and/or employees, paralegals, or administrative staff. In the event any Authorized Reviewer is requested or required by applicable laws or regulations, or in the course of administrative or judicial proceedings (in response to oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process) to disclose any of Protected Materials, the Authorized Reviewer shall immediately inform the Disclosing Party of the request, and the Disclosing Party may, at its sole discretion and cost, direct any challenge or defense against the disclosure requirement, and the Authorized Reviewer shall cooperate in good faith with such Party either to oppose the disclosure of the Protected Materials consistent with applicable law, or to obtain confidential treatment of the Protected Materials by the person or entity who wishes to receive them prior to any such disclosure. If there are multiple requests for substantially similar Protected Materials in the same case or proceeding where an Authorized Reviewer has been ordered to produce certain specific Protected Materials, the Authorized Reviewer may, upon request for substantially similar materials by another person or entity, respond in a manner consistent with that order to those substantially similar requests.

9. Return or Destruction of Protected Materials. Protected Materials shall remain available to Authorized Reviewers until an order terminating this proceeding becomes no longer subject to judicial review. If requested to do so in writing after that date, the Authorized Reviewers shall, within fifteen days after such request, return the Protected Materials to the Disclosing Party that produced such Protected Materials, or shall destroy the materials, except that copies of filings, official transcripts and exhibits in this proceeding that contain Protected Materials, and notes of Protected Materials may be retained, if such Protected Materials are maintained in accordance with Paragraph 8. Within such time period each Authorized Reviewer, if requested to do so, shall also submit to the Disclosing Party an affidavit stating that, to the best
of its knowledge, all Protected Materials have been returned or have been destroyed or will be maintained in accordance with Paragraph 8. To the extent Protected Materials are not returned or destroyed, they shall remain subject to this Protective Order.

In the event that a Reviewing Representative to whom Protected Materials are disclosed ceases to be engaged to provide services in this proceeding, then access to such materials by that person shall be terminated and the Reviewing Representative shall immediately return or destroy all Protected Materials, or provide an affidavit stating that all Protected Materials and all notes of Protected Materials will be maintained in accordance with Paragraph 8. Even if a Reviewing Representative is no longer engaged in this proceeding, every such person shall continue to be bound by the provisions of this Protective Order and the Nondisclosure Certificate.

10. Access and Use by Governmental Entities.

A. In the event the Commission receives a request from the California Energy Commission (“CEC”) for a copy of or access to any Party’s Protected Materials, the procedure for handling such requests shall be as follows. Not less than five (5) business days after delivering written notice to the Disclosing Party of the request, the Commission shall release such Protected Materials to the CEC upon receipt from the CEC of an Interagency Information Request and Confidentiality Agreement (“Interagency Confidentiality Agreement”). Such Interagency Confidentiality Agreement shall: (i) provide that the CEC will treat the requested Protected Materials as confidential in accordance with this Protective Order; (ii) include an explanation of the purpose for the CEC’s request, as well as an explanation of how the request relates to furtherance of the CEC’s functions; (iii) be signed by a person authorized to bind the CEC contractually; and (iv) expressly state that furnishing of the requested Protected Materials to employees or representatives of the CEC does not, by itself, make such Protected Materials public. In addition, the Interagency Confidentiality Agreement shall include an express
acknowledgment of the Commission’s sole authority (subject to judicial review) to make the
determination whether the Protected Materials should remain confidential or be disclosed to the
public, notwithstanding any provision to the contrary in the statutes or regulations applicable to
the CEC.

B. In the event the Commission receives a request for a copy of or access to a
party’s Protected Materials from a state governmental agency other than the CEC that is
authorized to enter into a written agreement sufficient to satisfy the requirements for maintaining
confidentiality set forth in Government Code Section 6254.5(e), the Commission may, not less
than five (5) business days after giving written notice to the Disclosing Party of the request,
release such Protected Materials to the requesting governmental agency, upon receiving from the
requesting agency an executed Interagency Confidentiality Agreement that contains the same
provisions described in Paragraph 10.A above.

C. The CEC may use Protected Materials when needed to fulfill its statutory
responsibilities or cooperative agreements with the Commission. Commission confidentiality
designations will be maintained by the CEC in making such assessments, and the CEC will not
publish any assessment that directly reveals the data or allows the data submitted by an
individual load serving entity to be “reverse engineered.”

11. Dispute Resolution. All disputes that arise under this Protective Order, including
but not limited to alleged violations of this Protective Order and disputes concerning whether
materials were properly designated as Protected Materials, shall first be addressed by the parties
through a meet and confer process in an attempt to resolve such disputes. If the meet and confer
process is unsuccessful, either party may present the dispute for resolution to the Assigned ALJ
or the Law and Motion ALJ.
12. **Other Objections to Use or Disclosure.** Nothing in this Protective Order shall be construed as limiting the right of a Party, the Commission Staff, or a state governmental agency covered by Paragraph 10 to object to the use or disclosure of Protected Materials on any legal ground, including relevance or privilege.

13. **Remedies.** Any violation of this Protective Order shall constitute a violation of an order of the Commission. Notwithstanding the foregoing, the parties and Commission Staff reserve their rights to pursue any legal or equitable remedies that may be available in the event of an actual or anticipated disclosure of Protected Materials.

14. **Withdrawal of Designation.** A Disclosing Party may agree at any time to remove the “Protected Materials” designation from any materials of such Party if, in its opinion, confidentiality protection is no longer required. In such a case, the Disclosing Party will notify all Requesting Parties that the Disclosing Party has agreed to withdraw its designation of Protected Materials for specific documents or material.

15. **Modification.** This Protective Order shall remain in effect unless and until it is modified or terminated by the Commission or the Assigned ALJ. The identity of the parties submitting Protected Materials may differ from time to time. In light of this situation, modifications to this Protective Order may become necessary. The Parties shall work cooperatively to develop such modifications and, to the extent the Parties are able to agree to modifications, shall file a motion with the Assigned ALJ or the Commission seeking approval of the modifications. To the extent Parties are unable to agree on modifications after a good faith effort, each party governed by this Protective Order has the right to seek modifications in it as appropriate from the Assigned ALJ or the Commission.

16. **Interpretation.** Headings are for convenience only and may not be used to restrict the scope of this Protective Order.
APPENDIX A TO MODEL PROTECTIVE ORDER

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

[Insert Proceeding Caption] ) Docket No. XX-XX-XXX

NONDISCLOSURE CERTIFICATE

I hereby certify my understanding that access to Protected Materials is provided to me pursuant to the terms and restrictions of the Protective Order in this proceeding, that I have been given a copy of and have read the Protective Order, and that I agree to be bound by it. I understand that the contents of the Protected Materials, any notes or other memoranda, or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with that Protective Order. I acknowledge that a violation of this certificate constitutes a violation of an order of California Public Utilities Commission.

Signed: _______________________
Name _________________________
Title: _________________________
Organization: __________________
Dated: ________________________
Appendix B

Updated Model Protective Order

(redline version)
BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

[Insert Proceeding Caption] )
) Docket No. XX-XX-XXX

[MODEL] PROTECTIVE ORDER

1. **Scope.** This Protective Order shall govern access to and the use of Protected Materials, produced by, or on behalf of, any Disclosing Party (as defined in Paragraph 2 below) in this proceeding.

2. **Definitions**

   In addition to the terms defined and capitalized in other sections of this Protective Order, the following terms are defined for the purposes of this Protective Order:

   A. For purposes of this Protective Order, the term “Protected Materials” means: (i) trade secret, market sensitive, or other confidential and/or proprietary information as determined by the Disclosing Party in accordance with the provisions of Decision (“D.”) 06-06-066 and subsequent decisions, including D.14-10-033 which governs the treatment of market sensitive greenhouse gas data and information, General Order 66-C, Public Utilities Code section 454.5(g), or any other right of confidentiality provided by law; or (ii) any other materials that are made subject to this Protective Order by the Assigned Administrative Law Judge (“Assigned ALJ”), Law and Motion Administrative Law Judge (“Law and Motion ALJ”), Assigned Commissioner, the California Public Utilities Commission (“Commission”), or any court or other body having appropriate authority. Protected Materials also include memoranda, handwritten notes, spreadsheets, computer files and reports, and any other form of information (including information in electronic form) that copies, discloses, incorporates, includes or
compiles other Protected Materials or from which such materials may be derived (except that any
derivative materials must be separately shown to be confidential). Protected Materials do not
include: (i) any information or document contained in the public files of the Commission or any
other state or federal agency, or in any state or federal court; or (ii) any information that is public
knowledge, or which becomes public knowledge, other than through disclosure in violation of
this Protective Order or any other nondisclosure agreement or protective order.

B. The term “redacted” refers to situations in which Protected Material in a
document, whether the document is in paper or electronic form, have been covered, blocked out,
or removed.

C. The term “Disclosing Party” means a party who initially discloses any
specified Protected Material in this proceeding.

D. The term “Requesting Party” means any party that is requesting receipt of
Protected Material from a Disclosing Party.

E. The term “Party” refers to the Requesting Party or the Disclosing Party
and the term “Parties” refers to both the Requesting Party and the Disclosing Party.

F. The term “Market Participant” refers to a Requesting Party that is:

1) A person or entity, or an employee of an entity, that engages in the
wholesale purchase, sale or marketing of energy or capacity, or the
bidding on or purchasing of power plants, or bidding on utility
procurement solicitations, or consulting on such matters, subject to the
limitations in 3) below.

2) A trade association or similar organization, or an employee of such
organization,

a) whose primary focus in proceedings at the Commission is to
advocate for persons/entities that purchase, sell or market
energy or capacity at wholesale; bid on, own, or purchase
power plants; or bid on utility procurement solicitations; or

b) a majority of whose members purchase, sell or market energy
or capacity at wholesale; bid on, own, or purchase power plants; or bid on utility procurement solicitations; or

c) formed for the purpose of obtaining Protected Materials; or

d) controlled or primarily funded by a person or entity whose primary purpose is to purchase, sell or market energy or capacity at wholesale; bid on, own, or purchase power plants; or bid on utility procurement solicitations.

3) A person or entity that meets the criteria of 1) above is not a Market Participant for purpose of access to Protected Materials unless the person/entity seeking access to Protected Materials has the potential to materially affect the price paid or received for electricity if in possession of such information. An entity will be considered not to have such potential if:

a) the person or entity’s participation in the California electricity market is *de minimis* in nature. In the resource adequacy proceeding (R.05-12-013) it was determined in D.06-06-064 § 3.3.2 that the resource adequacy requirement should be rounded to the nearest megawatt (MW), and load serving entities (LSEs) with local resource adequacy requirements less than 1 MW are not required to make a showing. Therefore, a *de minimis* amount of energy would be less than 1 MW of capacity per year, and/or an equivalent of energy; and/or

b) the person or entity has no ability to dictate the price of electricity it purchases or sells because such price is set by a process over which the person or entity has no control, *i.e.*, where the prices for power put to the grid are completely overseen by the Commission, such as subject to a standard offer contract or tariff price. A person or entity that currently has no ability to dictate the price of electricity it purchases or sells under this section, but that will have such ability within one year because its contract is expiring or other circumstances are changing, does not meet this exception; and/or

c) the person or entity is a cogenerator that consumes all the power it generates in its own industrial and commercial processes, if it can establish a legitimate need for Protected Materials.
G. The term “Non-Market Participant” refers to a Requesting Party that does not meet the definition of Market Participant. The California Independent System Operator is deemed a Non-Market Participant for purposes of this Protective Order.

H. “Reviewing Representatives” are limited to person(s) designated in accordance with Paragraph 5 who meet the following criteria:

1) Reviewing Representatives may not currently be engaged in: (a) a transaction for the purchase, sale, or marketing at wholesale of electrical energy or capacity or natural gas (or the direct supervision of any employee(s) engagement in such a transaction); (b) the bidding on or purchasing of power plants (or the direct supervision of any employee(s) engagement in such a transaction); or (c) knowingly providing electricity or gas marketing consulting or advisory services to others in connection with a transaction for the purchase, sale, or marketing at wholesale of electrical energy or capacity or natural gas or the bidding on or purchasing of power plants (or the direct supervision of any employee(s) engagement in such a transaction or consulting).

2) Reviewing Representatives may not be an employee of a Market Participant. If the Market Participant or Non-Market Participant chooses to retain outside attorneys, consultants, or experts in the same law firm or consulting firm to provide advice in connection with marketing activities, then the attorney, consultant, or expert serving as a Reviewing Representative must be separated by an ethics wall consistent with the ethics wall requirements in D.11-07-028, as that decision may be subsequently modified or changed by the Commission, from those in the firm who are involved in wholesale commercial dealings.

3) Reviewing Representatives shall use Protected Materials only for the purpose of participating in the Commission proceeding in which they received the information.

4) Reviewing Representatives are permitted to participate in regulatory proceedings on behalf of Market Participants and Non-Market Participants.

5) All Reviewing Representatives are required to execute the Nondisclosure Certificate attached to this Protective Order and are bound by the terms of this Protective Order.
I. The term “Authorized Reviewers” refers to: (1) a Requesting Party that is a Non-Market Participant; or (2) a Reviewing Representative of a Requesting Party. A Requesting Party that is a Market Participant is not an Authorized Reviewer but it may designate a Reviewing Representative in accordance with Paragraph 5.

J. The term “Nondisclosure Certificate” refers to the Nondisclosure Certificate attached as Appendix A.


When filing or providing in discovery any documents or items containing Protected Materials, a party shall physically mark such documents (or in the case of non-documentary materials such as computer diskettes, on each item) as “PROTECTED MATERIALS SUBJECT TO PROTECTIVE ORDER,” or with words of similar import as long as one or more of the terms “Protected Materials” or “Protective Order” is included in the designation to indicate that the materials in question are Protected Materials. All materials so designated shall be treated as Protected Materials unless and until: (a) the designation is withdrawn pursuant to Paragraph 14 hereof; (b) an Assigned ALJ, Law and Motion ALJ, Assigned Commissioner, or the Commission makes a determination that: (i) the document does not contain Protected Materials or does not warrant confidential treatment or (ii) denies a motion to file the document under seal; or (c) the document or information becomes public knowledge, other than through disclosure in violation of this Protective Order or any other nondisclosure agreement or protective order. However, the Disclosing Party has the burden of showing that the documents are Protected Materials, and merely marking a document “Protected Materials” is insufficient to meet that burden.

All documents containing Protected Materials that are tendered for filing with the Commission shall be placed in sealed envelopes or otherwise appropriately protected and shall be tendered with a motion to file the document under seal pursuant to Rule 11.4 of the
Commission’s Rules of Practice and Procedure. All documents containing Protected Materials that are served on parties in a proceeding shall be placed in sealed envelopes or otherwise appropriately protected and shall be endorsed to the effect that they are served under seal pursuant to this Protective Order. Such documents shall only be served upon Authorized Reviewers and persons employed by or working on behalf of the Commission. Service upon Authorized Reviewers and persons employed by or working on behalf of the Commission may either be: (a) by electronic mail in accordance with the procedures adopted in this proceeding; (b) by facsimile; or (c) by overnight mail or messenger service. Whenever service of a document containing Protected Materials is made by overnight mail or messenger service, the Assigned ALJ shall be served with such document by the same means and at the same time.

4. **Redaction of Documents.** Whenever a Party files, serves or provides in discovery a document that includes Protected Materials (including but not limited to briefs, testimony, exhibits, and responses to data requests), such Party shall also prepare a redacted version of such document. The redacted version shall enable persons familiar with this proceeding to determine with reasonable certainty the nature of the data that has been redacted and where the redactions occurred. The redacted version of a document to be filed shall be served on all persons on the service list, and the redacted version of a discovery document shall be served on all persons entitled thereto.

5. **Designation of Reviewing Representatives.** The Requesting Party shall provide written notice identifying its proposed Reviewing Representative(s) to the Disclosing Party before the Disclosing Party provides any Protected Materials to the Requesting Party’s Authorized Reviewers. The written notice shall include the information identified in this paragraph. If the Requesting Party decides to designate any additional Reviewing Representative(s) after the Requesting Party’s Authorized Reviewers receive Protected
Materials, the Requesting Party shall identify the additional proposed Reviewing Representative(s) to the Disclosing Party before the Requesting Party provides Protected Materials to the additional Reviewing Representative(s). Within five (5) business days after receiving written notice of the identity of any Reviewing Representative, the Disclosing Party may provide the Requesting Party with a written objection to a specific Reviewing Representative stating the grounds for the objection. Any dispute concerning whether an identified person or entity is an appropriate Reviewing Representative shall be resolved through the dispute resolution procedures in Paragraph 11 of this Protective Order. If a Disclosing Party objects to a specific Reviewing Representative within five (5) business days after the Reviewing Representative is identified, the Parties shall not provide any Protected Materials to the disputed Reviewing Representative until the Parties are able to resolve the dispute consistent with the dispute resolution procedures in Paragraph 11. Failure by the Disclosing Party to object within five (5) business days does not waive the Disclosing Party’s right to later object to the Reviewing Representative, even if Protected Materials has already been disclosed. However, further disclosure of Protected Materials would be stayed until the parties are able to resolve the dispute consistent with the dispute resolution procedures in Paragraph 11.

Reviewing Representative(s) have a duty to disclose to the Disclosing Party any potential conflict of interest that puts the Reviewing Representative in violation of D.06-12-030, as modified by subsequent decisions of the Commission. A resume or curriculum vitae is reasonable disclosure of such potential conflicts, and should be the default evidence provided in most cases.

6. **Nondisclosure Certificates.** A Reviewing Representative shall not inspect, participate in discussions regarding, or otherwise be granted access to, Protected Materials unless and until he or she has first completed and executed a Nondisclosure Certificate, attached hereto
as Appendix A, and delivered the signed Nondisclosure Certificate to the Disclosing Party. The
Disclosing Party shall retain the executed Nondisclosure Certificates pertaining to the Protected
Materials it has disclosed and shall promptly provide copies of the Nondisclosure Certificates to
Commission Staff upon request.

7. **Access to Protected Materials and Use of Protected Materials.** Subject to the
terms of this Protective Order, Authorized Reviewers shall be entitled to access any Protected
Materials and may make copies of Protected Materials, but such copies become Protected
Materials. Authorized Reviewers may make notes of Protected Materials, which shall be treated
as Protected Materials if such notes disclose any Protected Materials. Protected Materials
obtained by a Party in this proceeding may also be requested by that Party in a subsequent
Commission proceeding, subject to the terms of any nondisclosure agreement or protective order
governing that subsequent proceeding, without constituting a violation of this Protective Order.

8. **Maintaining Confidentiality of Protected Materials.** Each Authorized Reviewer
shall treat Protected Materials as confidential in accordance with this Protective Order and the
Nondisclosure Certificate. Protected Materials shall not be used except as necessary for
participation in this proceeding, and shall not be disclosed in any manner to any person except:
(i) Authorized Reviewers; (ii) an Authorized Reviewer’s employees and administrative
personnel, such as clerks, secretaries, and word processors, to the extent necessary to assist the
Authorized Reviewer, provided that they shall first ensure that such personnel are familiar with
the terms of this Protective Order and have signed a Nondisclosure Certificate; and (iii) persons
employed by or working on behalf of the Commission. Authorized Reviewers shall adopt
suitable measures to maintain the confidentiality of Protected Materials they have obtained
pursuant to this Protective Order, and shall treat such Protected Materials in the same manner as
they treat their own most highly confidential information.
Authorized Reviewers shall be liable for any unauthorized disclosure or use by themselves and/or employees, paralegals, or administrative staff. In the event any Authorized Reviewer is requested or required by applicable laws or regulations, or in the course of administrative or judicial proceedings (in response to oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process) to disclose any of Protected Materials, the Authorized Reviewer shall immediately inform the Disclosing Party of the request, and the Disclosing Party may, at its sole discretion and cost, direct any challenge or defense against the disclosure requirement, and the Authorized Reviewer shall cooperate in good faith with such Party either to oppose the disclosure of the Protected Materials consistent with applicable law, or to obtain confidential treatment of the Protected Materials by the person or entity who wishes to receive them prior to any such disclosure. If there are multiple requests for substantially similar Protected Materials in the same case or proceeding where an Authorized Reviewer has been ordered to produce certain specific Protected Materials, the Authorized Reviewer may, upon request for substantially similar materials by another person or entity, respond in a manner consistent with that order to those substantially similar requests.

9. **Return or Destruction of Protected Materials.** Protected Materials shall remain available to Authorized Reviewers until an order terminating this proceeding becomes no longer subject to judicial review. If requested to do so in writing after that date, the Authorized Reviewers shall, within fifteen days after such request, return the Protected Materials to the Disclosing Party that produced such Protected Materials, or shall destroy the materials, except that copies of filings, official transcripts and exhibits in this proceeding that contain Protected Materials, and notes of Protected Materials may be retained, if such Protected Materials are maintained in accordance with Paragraph 8. Within such time period each Authorized Reviewer, if requested to do so, shall also submit to the Disclosing Party an affidavit stating that, to the best
of its knowledge, all Protected Materials have been returned or have been destroyed or will be
maintained in accordance with Paragraph 8. To the extent Protected Materials are not returned
or destroyed, they shall remain subject to this Protective Order.

In the event that a Reviewing Representative to whom Protected Materials are disclosed
ceases to be engaged to provide services in this proceeding, then access to such materials by that
person shall be terminated and the Reviewing Representative shall immediately return or destroy
all Protected Materials, or provide an affidavit stating that all Protected Materials and all notes of
Protected Materials will be maintained in accordance with Paragraph 8. Even if a Reviewing
Representative is no longer engaged in this proceeding, every such person shall continue to be
bound by the provisions of this Protective Order and the Nondisclosure Certificate.

10. Access and Use by Governmental Entities.

A. In the event the Commission receives a request from the California Energy
Commission (“CEC”) for a copy of or access to any Party’s Protected Materials, the procedure
for handling such requests shall be as follows. Not less than five (5) business days after
delivering written notice to the Disclosing Party of the request, the Commission shall release
such Protected Materials to the CEC upon receipt from the CEC of an Interagency Information
Request and Confidentiality Agreement (“Interagency Confidentiality Agreement”). Such
Interagency Confidentiality Agreement shall: (i) provide that the CEC will treat the requested
Protected Materials as confidential in accordance with this Protective Order; (ii) include an
explanation of the purpose for the CEC’s request, as well as an explanation of how the request
relates to furtherance of the CEC’s functions; (iii) be signed by a person authorized to bind the
CEC contractually; and (iv) expressly state that furnishing of the requested Protected Materials
to employees or representatives of the CEC does not, by itself, make such Protected Materials
public. In addition, the Interagency Confidentiality Agreement shall include an express
acknowledgment of the Commission’s sole authority (subject to judicial review) to make the
determination whether the Protected Materials should remain confidential or be disclosed to the
public, notwithstanding any provision to the contrary in the statutes or regulations applicable to
the CEC.

B. In the event the Commission receives a request for a copy of or access to a
party’s Protected Materials from a state governmental agency other than the CEC that is
authorized to enter into a written agreement sufficient to satisfy the requirements for maintaining
confidentiality set forth in Government Code Section 6254.5(e), the Commission may, not less
than five (5) business days after giving written notice to the Disclosing Party of the request,
release such Protected Materials to the requesting governmental agency, upon receiving from the
requesting agency an executed Interagency Confidentiality Agreement that contains the same
provisions described in Paragraph 10.A above.

C. The CEC may use Protected Materials when needed to fulfill its statutory
responsibilities or cooperative agreements with the Commission. Commission confidentiality
designations will be maintained by the CEC in making such assessments, and the CEC will not
publish any assessment that directly reveals the data or allows the data submitted by an
individual load serving entity to be “reverse engineered.”

11. Dispute Resolution. All disputes that arise under this Protective Order, including
but not limited to alleged violations of this Protective Order and disputes concerning whether
materials were properly designated as Protected Materials, shall first be addressed by the parties
through a meet and confer process in an attempt to resolve such disputes. If the meet and confer
process is unsuccessful, either party may present the dispute for resolution to the Assigned ALJ
or the Law and Motion ALJ.
12. **Other Objections to Use or Disclosure.** Nothing in this Protective Order shall be construed as limiting the right of a Party, the Commission Staff, or a state governmental agency covered by Paragraph 10 to object to the use or disclosure of Protected Materials on any legal ground, including relevance or privilege.

13. **Remedies.** Any violation of this Protective Order shall constitute a violation of an order of the Commission. Notwithstanding the foregoing, the parties and Commission Staff reserve their rights to pursue any legal or equitable remedies that may be available in the event of an actual or anticipated disclosure of Protected Materials.

14. **Withdrawal of Designation.** A Disclosing Party may agree at any time to remove the “Protected Materials” designation from any materials of such Party if, in its opinion, confidentiality protection is no longer required. In such a case, the Disclosing Party will notify all Requesting Parties that the Disclosing Party has agreed to withdraw its designation of Protected Materials for specific documents or material.

15. **Modification.** This Protective Order shall remain in effect unless and until it is modified or terminated by the Commission or the Assigned ALJ. The identity of the parties submitting Protected Materials may differ from time to time. In light of this situation, modifications to this Protective Order may become necessary. The Parties shall work cooperatively to develop such modifications and, to the extent the Parties are able to agree to modifications, shall file a motion with the Assigned ALJ or the Commission seeking approval of the modifications. To the extent Parties are unable to agree on modifications after a good faith effort, each party governed by this Protective Order has the right to seek modifications in it as appropriate from the Assigned ALJ or the Commission.

16. **Interpretation.** Headings are for convenience only and may not be used to restrict the scope of this Protective Order.
APPENDIX A TO MODEL PROTECTIVE ORDER
BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

[Insert Proceeding Caption] )
______________________________ ) Docket No. XX-XX-XXX

NONDISCLOSURE CERTIFICATE

I hereby certify my understanding that access to Protected Materials is provided to me pursuant to the terms and restrictions of the Protective Order in this proceeding, that I have been given a copy of and have read the Protective Order, and that I agree to be bound by it. I understand that the contents of the Protected Materials, any notes or other memoranda, or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with that Protective Order. I acknowledge that a violation of this certificate constitutes a violation of an order of California Public Utilities Commission.

Signed: _______________________

Name _______________________

Title: _______________________

Organization: __________________

Dated: _______________________
Appendix C

Updated Non-Disclosure Agreement

(clean version)
[MODEL] NONDISCLOSURE AGREEMENT REGARDING MARKET PROTECTED MATERIALS

1. **Scope.** This Nondisclosure Agreement Regarding Protected Materials ("Nondisclosure Agreement") shall govern access to and the use of Protected Materials, produced by, or on behalf of, a Disclosing Party (as defined in Paragraph 2 below) in this proceeding.

2. **Definitions**

In addition to the terms defined and capitalized in other sections of this Nondisclosure Agreement, the following terms are defined for the purposes of this Nondisclosure Agreement:

A. For purposes of this Nondisclosure Agreement, the term "Protected Materials" means: (i) trade secret, market sensitive, or other confidential and/or proprietary information as determined by the Disclosing Party in accordance with the provisions of Decision ("D.") 06-06-066 and subsequent decisions, including D.14-10-033 which governs the treatment of market sensitive greenhouse gas data and information, General Order 66-C, Public Utilities Code section 454.5(g), or any other right of confidentiality provided by law; or (ii) any other materials that are made subject to this Nondisclosure Agreement by the Assigned Administrative Law Judge ("Assigned ALJ"), Law and Motion Administrative Law Judge ("Law and Motion ALJ"), Assigned Commissioner, the California Public Utilities Commission ("Commission"), or any court or other body having appropriate authority. Protected Materials also include memoranda, handwritten notes, spreadsheets, computer files and reports, and any other form of information (including information in electronic form) that copies, discloses, incorporates,
includes or compiles other Protected Materials or from which such materials may be derived (except that any derivative materials must be separately shown to be confidential). Protected Materials do not include: (i) any information or document contained in the public files of the Commission or any other state or federal agency, or in any state or federal court; or (ii) any information that is public knowledge, or which becomes public knowledge, other than through disclosure in violation of this Nondisclosure Agreement or any other nondisclosure agreement or protective order.

B. The term “redacted” refers to situations in which Protected Materials in a document, whether the document is in paper or electronic form, have been covered, blocked out, or removed.

C. The “Disclosing Party” is _________________ [Insert entity name].

D. The “Requesting Party” is _________________ [Insert entity name].

E. The term “Party” refers to the Requesting Party or the Disclosing Party and the term “Parties” refers to both the Requesting Party and the Disclosing Party.

F. The term “Market Participant” refers to a Requesting Party that is:

1) A person or entity, or an employee of an entity, that engages in the wholesale purchase, sale or marketing of energy or capacity, or the bidding on or purchasing of power plants, or bidding on utility procurement solicitations, or consulting on such matters, subject to the limitations in 3) below.

2) A trade association or similar organization, or an employee of such organization,

a) whose primary focus in proceedings at the Commission is to advocate for persons/entities that purchase, sell or market energy or capacity at wholesale; bid on, own, or purchase power plants; or bid on utility procurement solicitations; or

b) a majority of whose members purchase, sell or market energy or capacity at wholesale; bid on, own, or purchase power plants; or bid on utility procurement solicitations; or
c) formed for the purpose of obtaining Protected Materials; or

d) controlled or primarily funded by a person or entity whose primary purpose is to purchase, sell or market energy or capacity at wholesale; bid on, own, or purchase power plants; or bid on utility procurement solicitations.

3) A person or entity that meets the criteria of 1) above is not a Market Participant for purpose of access to Protected Materials unless the person/entity seeking access to Protected Materials has the potential to materially affect the price paid or received for electricity if in possession of such information. An entity will be considered not to have such potential if:

a) the person or entity’s participation in the California electricity market is *de minimis* in nature. In the resource adequacy proceeding (R.05-12-013) it was determined in D.06-06-064 §3.3.2 that the resource adequacy requirement should be rounded to the nearest megawatt (MW), and load serving entities (LSEs) with local resource adequacy requirements less than 1 MW are not required to make a showing. Therefore, a *de minimis* amount of energy would be less than 1 MW of capacity per year, and/or an equivalent of energy; and/or

b) the person or entity has no ability to dictate the price of electricity it purchases or sells because such price is set by a process over which the person or entity has no control, *i.e.*, where the prices for power put to the grid are completely overseen by the Commission, such as subject to a standard offer contract or tariff price. A person or entity that currently has no ability to dictate the price of electricity it purchases or sells under this section, but that will have such ability within one year because its contract is expiring or other circumstances are changing, does not meet this exception; and/or

c) the person or entity is a cogenerator that consumes all the power it generates in its own industrial and commercial processes, if it can establish a legitimate need for Protected Materials.

G. The term “Non-Market Participant” refers to a Requesting Party that does not meet the definition of Market Participant. The California Independent System Operator is deemed a Non-Market Participant for purposes of this Nondisclosure Agreement.
H. “Reviewing Representatives” are limited to person(s) designated in accordance with Paragraph 5 who meet the following criteria:

1) Reviewing Representatives may not currently be engaged in: (a) a transaction for the purchase, sale, or marketing at wholesale of electrical energy or capacity or natural gas (or the direct supervision of any employee(s) engagement in such a transaction); (b) the bidding on or purchasing of power plants (or the direct supervision of any employee(s) engagement in such a transaction); or (c) knowingly providing electricity or gas marketing consulting or advisory services to others in connection with a transaction for the purchase, sale, or marketing at wholesale of electrical energy or capacity or natural gas or the bidding on or purchasing of power plants (or the direct supervision of any employee(s) engagement in such a transaction or consulting).

2) Reviewing Representatives may not be an employee of a Market Participant. If the Market Participant or Non-Market Participant chooses to retain outside attorneys, consultants, or experts in the same law firm or consulting firm to provide advice in connection with marketing activities, then the attorney, consultant, or expert serving as a Reviewing Representative must be separated by an ethics wall consistent with the ethics wall requirements in D.11-07-028, as that decision may be subsequently modified or changed by the Commission, from those in the firm who are involved in wholesale commercial dealings.

3) Reviewing Representatives shall use Protected Materials only for the purpose of participating in the Commission proceeding in which they received the information.

4) Reviewing Representatives are permitted to participate in regulatory proceedings on behalf of Market Participants and Non-Market Participants.

5) All Reviewing Representatives are required to execute the Nondisclosure Certificate attached to this Nondisclosure Agreement and are bound by the terms of this Nondisclosure Agreement.

I. The term “Authorized Reviewers” refers to: (1) a Requesting Party that is a Non-Market Participant that has executed a Nondisclosure Agreement; or (2) a Reviewing Representative of a Requesting Party if the Requesting Party has executed a Nondisclosure Agreement.
Agreement and the Reviewing Representative has executed a Nondisclosure Certificate. A Requesting Party that is a Market Participant is not an Authorized Reviewer but it may designate a Reviewing Representative in accordance with Paragraph 5.

J. The term “Nondisclosure Certificate” refers to the Nondisclosure Certificate attached as Appendix A.

3. Designation, Filing and Service of Protected Materials.

When filing or providing in discovery any documents or items containing Protected Materials, a Party shall physically mark such documents (or in the case of non-documentary materials such as computer diskettes, on each item) as “PROTECTED MATERIALS SUBJECT TO NONDISCLOSURE AGREEMENT,” or with words of similar import as long as one or more of the terms, “Protected Materials” or “Nondisclosure Agreement” is included in the designation to indicate that the materials in question are Protected Materials. All materials so designated shall be treated as Protected Materials unless and until: (a) the designation is withdrawn pursuant to Paragraph 13 hereof; (b) an Assigned ALJ, Law and Motion ALJ, Assigned Commissioner, or the Commission makes a determination that: (i) the document does not contain Protected Materials or does not warrant confidential treatment or (ii) denies a motion to file the document under seal; or (c) the document or information becomes public knowledge, other than through disclosure in violation of this Nondisclosure Agreement or any other nondisclosure agreement or protective order. However, the Disclosing Party has the burden of showing that the documents are Protected Materials, and merely marking a document “Protected Materials” is insufficient to meet that burden.

All documents containing Protected Materials that are tendered for filing with the Commission shall be placed in sealed envelopes or otherwise appropriately protected and shall be tendered with a motion to file the document under seal pursuant to Rule 11.4 of the Commission’s
Rules of Practice and Procedure. All documents containing Protected Materials that are served on parties in a proceeding shall be placed in sealed envelopes or otherwise appropriately protected and shall be endorsed to the effect that they are served under seal pursuant to this Nondisclosure Agreement. Such documents shall only be served upon Authorized Reviewers and persons employed by or working on behalf of the Commission. Service upon Authorized Reviewers and persons employed by or working on behalf of the Commission may either be: (a) by electronic mail in accordance with the procedures adopted in this proceeding; (b) by facsimile; or (c) by overnight mail or messenger service. Whenever service of a document containing Protected Materials is made by overnight mail or messenger service, the Assigned ALJ shall be served with such document by the same means and at the same time.

4. **Redaction of Documents.** Whenever a Party files, serves, or provides in discovery a document that includes Protected Materials (including but not limited to briefs, testimony, exhibits, and responses to data requests), such Party shall also prepare a redacted version of such document. The redacted version shall enable persons familiar with this proceeding to determine with reasonable certainty the nature of the data that has been redacted and where the redactions occurred. The redacted version of a document to be filed shall be served on all persons on the service list, and the redacted version of a discovery document shall be served on all persons entitled thereto.

5. **Designation of Reviewing Representatives.** The Requesting Party shall provide written notice identifying its proposed Reviewing Representative(s) to the Disclosing Party before the Disclosing Party provides any Protected Materials to the Requesting Party’s Authorized Reviewers. The written notice shall include the information identified in this paragraph. If the Requesting Party decides to designate any additional Reviewing Representative(s) after the Requesting Party receives Protected Materials, the Requesting Party shall identify the additional
proposed Reviewing Representative(s) to the Disclosing Party before the Requesting Party provides Protected Materials to the additional Reviewing Representative(s). Within five (5) business days after receiving written notice of the identity of any Reviewing Representative, the Disclosing Party may provide the Requesting Party with a written objection to a specific Reviewing Representative stating the grounds for the objection. Any dispute concerning whether an identified person or entity is an appropriate Reviewing Representative shall be resolved through the dispute resolution procedures in Paragraph 10 of this Nondisclosure Agreement. If a Disclosing Party objects to a specific Reviewing Representative within five (5) business days after the Reviewing Representative is identified, the Requesting Party shall not provide any Protected Materials to the disputed Reviewing Representative until the Parties are able to resolve the dispute consistent with the dispute resolution procedures in Paragraph 10. Failure by the Disclosing Party to object within five (5) business days does not waive the Disclosing Party’s right to later object to the Reviewing Representative, even if Protected Materials has already been disclosed. However, further disclosure of Protected Materials would be stayed until the parties are able to resolve the dispute consistent with the dispute resolution procedures in Paragraph 10.

Reviewing Representative(s) have a duty to disclose to the Disclosing Party any potential conflict that puts the Reviewing Representative in violation of D.06-12-030, as modified by subsequent decisions of the Commission. A resume or curriculum vitae is reasonable disclosure of such potential conflicts, and should be the default evidence provided in most cases.

6. **Nondisclosure Certificates.** A Reviewing Representative shall not inspect, participate in discussions regarding, or otherwise be granted access to, Protected Materials unless and until he or she has first completed and executed a Nondisclosure Certificate, attached hereto as Appendix A, and delivered the signed Nondisclosure Certificate to the Disclosing Party. The Disclosing Party shall retain the executed Nondisclosure Certificates pertaining to the Protected
Materials it has disclosed and shall promptly provide copies of the Nondisclosure Certificates to Commission Staff upon request.

7. **Access to Protected Materials and Use of Protected Materials.** Subject to the terms of this Nondisclosure Agreement, Authorized Reviewers shall be entitled to access any Protected Materials and may make copies of Protected Materials, but such copies become Protected Materials. Authorized Reviewers may make notes of Protected Materials, which shall be treated as Protected Materials if such notes disclose any Protected Materials. Protected Materials obtained by a Party in this proceeding may also be requested by that Party in a subsequent Commission proceeding, subject to the terms of any nondisclosure agreement or protective order governing that subsequent proceeding, without constituting a violation of this Nondisclosure Agreement.

8. **Maintaining Confidentiality of Protected Materials.** Each Authorized Reviewer shall treat Protected Materials as confidential in accordance with this Nondisclosure Agreement and the Nondisclosure Certificate. Protected Materials shall not be used except as necessary for participation in this proceeding, and shall not be disclosed in any manner to any person except: (i) Authorized Reviewers; (ii) an Authorized Reviewer’s employees and administrative personnel, such as clerks, secretaries, and word processors, to the extent necessary to assist the Authorized Reviewer, provided that they shall first ensure that such personnel are familiar with the terms of this Nondisclosure Agreement and have signed a Nondisclosure Certificate; and (iii) persons employed by or working on behalf of the Commission. Authorized Reviewers shall adopt suitable measures to maintain the confidentiality of Protected Materials they have obtained pursuant to this Nondisclosure Agreement, and shall treat such Protected Materials in the same manner as they treat their own most highly confidential information.
Reviewing Representatives shall be liable for any unauthorized disclosure or use by themselves and/or their employees, paralegal, or administrative staff. In the event any Requesting Party and/or its Reviewing Representative is requested or required by applicable laws or regulations, or in the course of administrative or judicial proceedings (in response to oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process) to disclose any of Protected Materials, the Requesting Party shall immediately inform the Disclosing Party of the request, and the Disclosing Party may, at its sole discretion and cost, direct any challenge or defense against the disclosure requirement, and the Requesting Party and its Reviewing Representative shall cooperate in good faith with such Party either to oppose the disclosure of the Protected Materials consistent with applicable law, or to obtain confidential treatment of the Protected Materials by the person or entity who wishes to receive them prior to any such disclosure. If there are multiple requests for substantially similar Protected Materials in the same case or proceeding where a Requesting Party and/or Reviewing Representative has been ordered to produce certain specific Protected Materials, the Requesting Party and/or Reviewing Representative may, upon request for substantially similar materials by another person or entity, respond in a manner consistent with that order to those substantially similar requests.

9. **Return or Destruction of Protected Materials.** Protected Materials shall remain available to an Authorized Reviewer until an order terminating this proceeding becomes no longer subject to judicial review. If requested to do so in writing after that date, the Authorized Reviewer shall, within fifteen days after such request, return the Protected Materials to the Disclosing Party that produced such Protected Materials, or shall destroy the materials, except that copies of filings, official transcripts and exhibits in this proceeding that contain Protected Materials, and notes of Protected Materials may be retained, if such Protected Materials are
maintained in accordance with Paragraph 8. Within such time period each Authorized Reviewer, if requested to do so, shall also submit to the Disclosing Party an affidavit stating that, to the best of its knowledge, all Protected Materials have been returned or have been destroyed, or will be maintained in accordance with Paragraph 8. To the extent Protected Materials are not returned or destroyed, such Protected Materials shall remain subject to this Nondisclosure Agreement.

In the event that a Reviewing Representative to whom Protected Materials are disclosed ceases to be engaged to provide services in this proceeding, then access to such materials by that person shall be terminated and the Reviewing Representative shall immediately return or destroy all Protected Materials, or provide a declaration stating that all Protected Materials and all notes of Protected Materials will be maintained in accordance with Paragraph 8. Even if a Reviewing Representative is no longer engaged in this proceeding, every such person shall continue to be bound by the provisions of this Nondisclosure Agreement and the Nondisclosure Certificate.

10. **Dispute Resolution.** All disputes that arise under this Nondisclosure Agreement, including but not limited to alleged violations of this Nondisclosure Agreement and disputes concerning whether materials were properly designated as Protected Materials, shall first be addressed by the Parties through a meet and confer process in an attempt to resolve such disputes. If the meet and confer process is unsuccessful, either Party may present the dispute for resolution to the Assigned ALJ or the Law and Motion ALJ.

11. **Other Objections to Use or Disclosure.** Nothing in this Nondisclosure Agreement shall be construed as limiting the right of a Party to object to the use or disclosure of Protected Materials on any legal ground, including relevance or privilege.

12. **Remedies.** Any violation of this Nondisclosure Agreement shall constitute a violation of an order of the Commission. Notwithstanding the foregoing, the Parties reserve their
rights to pursue any legal or equitable remedies that may be available in the event of an actual or anticipated disclosure of Protected Materials.

13. **Withdrawal of Designation.** A Disclosing Party may agree at any time to remove the “Protected Materials” designation from any materials of such Party if, in its opinion, confidentiality protection is no longer required. In such a case, the Disclosing Party will notify all Requesting Parties that the Disclosing Party has agreed to withdraw its designation of Protected Materials for specific documents or material.

14. **Modification.** This Nondisclosure Agreement shall remain in effect unless and until it is modified or terminated by written agreement of the parties or by order of the Commission or Assigned ALJ. The Parties agree that modifications to this Nondisclosure Agreement may become necessary, and they further agree to work cooperatively to devise and implement such modifications in as timely a manner as possible. Each Party governed by this Nondisclosure Agreement has the right to seek modifications in it as appropriate from the Assigned ALJ or the Commission.

15. **Interpretation.** Headings are for convenience only and may not be used to restrict the scope of this Nondisclosure Agreement.

**REQUESTING PARTY**

By: _____________________________
Title: ___________________________
Representing: _____________________
Date: ___________________________

**DISCLOSING PARTY**

By: _____________________________
Title: ___________________________
Representing: _____________________
Date: ___________________________
APPENDIX A TO MODEL NONDISCLOSURE AGREEMENT

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

[Insert Proceeding Caption]  )

Docket No. XX-XX-XXX

NONDISCLOSURE CERTIFICATE

I hereby certify my understanding that access to Protected Materials is provided to me pursuant to the terms and restrictions of the Nondisclosure Agreement between [REQUESTING PARTY] and [DISCLOSING PARTY] in this proceeding, that I have been given a copy of and have read the Nondisclosure Agreement, and that I agree to be bound by it. I understand that the contents of the Protected Materials, any notes or other memoranda, or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with that Nondisclosure Agreement. I acknowledge that a violation of this certificate constitutes a violation of an order of California Public Utilities Commission.

Signed: _______________________

Name _______________________

Title: _______________________

Organization: __________________

Dated: _______________________
Appendix D
Updated Non-Disclosure Agreement
(redline version)
1. **Scope.** This Nondisclosure Agreement Regarding Protected Materials (“Nondisclosure Agreement”) shall govern access to and the use of Protected Materials, produced by, or on behalf of, a Disclosing Party (as defined in Paragraph 2 below) in this proceeding.

2. **Definitions**

   In addition to the terms defined and capitalized in other sections of this Nondisclosure Agreement, the following terms are defined for the purposes of this Nondisclosure Agreement:

   A. For purposes of this Nondisclosure Agreement, the term “Protected Materials” means: (i) trade secret, market sensitive, or other confidential and/or proprietary information as determined by the Disclosing Party in accordance with the provisions of Decision (“D.”) 06-06-066 and subsequent decisions, including D.14-10-033 which governs the treatment of market sensitive greenhouse gas data and information, General Order 66-C, Public Utilities Code section 454.5(g), or any other right of confidentiality provided by law; or (ii) any other materials that are made subject to this Nondisclosure Agreement by the Assigned Administrative Law Judge (“Assigned ALJ”), Law and Motion Administrative Law Judge (“Law and Motion ALJ”), Assigned Commissioner, the California Public Utilities Commission (“Commission”), or any court or other body having appropriate authority. Protected Materials also include memoranda, handwritten notes, spreadsheets, computer files and reports, and any other form of information (including information in electronic form) that copies, discloses, incorporates,
includes or compiles other Protected Materials or from which such materials may be derived (except that any derivative materials must be separately shown to be confidential). Protected Materials do not include: (i) any information or document contained in the public files of the Commission or any other state or federal agency, or in any state or federal court; or (ii) any information that is public knowledge, or which becomes public knowledge, other than through disclosure in violation of this Nondisclosure Agreement or any other nondisclosure agreement or protective order.

B. The term “redacted” refers to situations in which Protected Materials in a document, whether the document is in paper or electronic form, have been covered, blocked out, or removed.

C. The “Disclosing Party” is _________________ [Insert entity name].

D. The “Requesting Party” is _________________ [Insert entity name].

E. The term “Party” refers to the Requesting Party or the Disclosing Party and the term “Parties” refers to both the Requesting Party and the Disclosing Party.

F. The term “Market Participant” refers to a Requesting Party that is:

1) A person or entity, or an employee of an entity, that engages in the wholesale purchase, sale or marketing of energy or capacity, or the bidding on or purchasing of power plants, or bidding on utility procurement solicitations, or consulting on such matters, subject to the limitations in 3) below.

2) A trade association or similar organization, or an employee of such organization,

   a) whose primary focus in proceedings at the Commission is to advocate for persons/entities that purchase, sell or market energy or capacity at wholesale; bid on, own, or purchase power plants; or bid on utility procurement solicitations; or

   b) a majority of whose members purchase, sell or market energy or capacity at wholesale; bid on, own, or purchase power plants; or bid on utility procurement solicitations; or
c) formed for the purpose of obtaining Protected Materials; or

d) controlled or primarily funded by a person or entity whose primary purpose is to purchase, sell or market energy or capacity at wholesale; bid on, own, or purchase power plants; or bid on utility procurement solicitations.

3) A person or entity that meets the criteria of 1) above is not a Market Participant for purpose of access to Protected Materials unless the person/entity seeking access to Protected Materials has the potential to materially affect the price paid or received for electricity if in possession of such information. An entity will be considered not to have such potential if:

a) the person or entity’s participation in the California electricity market is de minimis in nature. In the resource adequacy proceeding (R.05-12-013) it was determined in D.06-06-064 §3.3.2 that the resource adequacy requirement should be rounded to the nearest megawatt (MW), and load serving entities (LSEs) with local resource adequacy requirements less than 1 MW are not required to make a showing. Therefore, a de minimis amount of energy would be less than 1 MW of capacity per year, and/or an equivalent of energy; and/or

b) the person or entity has no ability to dictate the price of electricity it purchases or sells because such price is set by a process over which the person or entity has no control, i.e., where the prices for power put to the grid are completely overseen by the Commission, such as subject to a standard offer contract or tariff price. A person or entity that currently has no ability to dictate the price of electricity it purchases or sells under this section, but that will have such ability within one year because its contract is expiring or other circumstances are changing, does not meet this exception; and/or

c) the person or entity is a cogenerator that consumes all the power it generates in its own industrial and commercial processes, if it can establish a legitimate need for Protected Materials.

G. The term “Non-Market Participant” refers to a Requesting Party that does not meet the definition of Market Participant. The California Independent System Operator is deemed a Non-Market Participant for purposes of this Nondisclosure Agreement.
H. “Reviewing Representatives” are limited to person(s) designated in accordance with Paragraph 5 who meet the following criteria:

1) Reviewing Representatives may not currently be engaged in: (a) a transaction for the purchase, sale, or marketing at wholesale of electrical energy or capacity or natural gas (or the direct supervision of any employee(s) engagement in such a transaction); (b) the bidding on or purchasing of power plants (or the direct supervision of any employee(s) engagement in such a transaction); or (c) knowingly providing electricity or gas marketing consulting or advisory services to others in connection with a transaction for the purchase, sale, or marketing at wholesale of electrical energy or capacity or natural gas or the bidding on or purchasing of power plants (or the direct supervision of any employee(s) engagement in such a transaction or consulting).

2) Reviewing Representatives may not be an employee of a Market Participant. If the Market Participant or Non-Market Participant chooses to retain outside attorneys, consultants, or experts in the same law firm or consulting firm to provide advice in connection with marketing activities, then the attorney, consultant, or expert serving as a Reviewing Representative must be separated by an ethics wall consistent with the ethics wall requirements in D.11-07-028, as that decision may be subsequently modified or changed by the Commission, from those in the firm who are involved in wholesale commercial dealings.

3) Reviewing Representatives shall use Protected Materials only for the purpose of participating in the Commission proceeding in which they received the information.

4) Reviewing Representatives are permitted to participate in regulatory proceedings on behalf of Market Participants and Non-Market Participants.

5) All Reviewing Representatives are required to execute the Nondisclosure Certificate attached to this Nondisclosure Agreement and are bound by the terms of this Nondisclosure Agreement.

I. The term “Authorized Reviewers” refers to: (1) a Requesting Party that is a Non-Market Participant that has executed a Nondisclosure Agreement; or (2) a Reviewing Representative of a Requesting Party if the Requesting Party has executed a Nondisclosure
Agreement and the Reviewing Representative has executed a Nondisclosure Certificate. A Requesting Party that is a Market Participant is not an Authorized Reviewer but it may designate a Reviewing Representative in accordance with Paragraph 5.

J. The term “Nondisclosure Certificate” refers to the Nondisclosure Certificate attached as Appendix A.

3. Designation, Filing and Service of Protected Materials.

When filing or providing in discovery any documents or items containing Protected Materials, a Party shall physically mark such documents (or in the case of non-documentary materials such as computer diskettes, on each item) as “PROTECTED MATERIALS SUBJECT TO NONDISCLOSURE AGREEMENT,” or with words of similar import as long as one or more of the terms, “Protected Materials” or “Nondisclosure Agreement” is included in the designation to indicate that the materials in question are Protected Materials. All materials so designated shall be treated as Protected Materials unless and until: (a) the designation is withdrawn pursuant to Paragraph 13 hereof; (b) an Assigned ALJ, Law and Motion ALJ, Assigned Commissioner, or the Commission makes a determination that: (i) the document does not contain Protected Materials or does not warrant confidential treatment or (ii) denies a motion to file the document under seal; or (c) the document or information becomes public knowledge, other than through disclosure in violation of this Nondisclosure Agreement or any other nondisclosure agreement or protective order. However, the Disclosing Party has the burden of showing that the documents are Protected Materials, and merely marking a document “Protected Materials” is insufficient to meet that burden.

All documents containing Protected Materials that are tendered for filing with the Commission shall be placed in sealed envelopes or otherwise appropriately protected and shall be tendered with a motion to file the document under seal pursuant to Rule 11.4 of the Commission’s
Rules of Practice and Procedure. All documents containing Protected Materials that are served on parties in a proceeding shall be placed in sealed envelopes or otherwise appropriately protected and shall be endorsed to the effect that they are served under seal pursuant to this Nondisclosure Agreement. Such documents shall only be served upon Authorized Reviewers and persons employed by or working on behalf of the Commission. Service upon Authorized Reviewers and persons employed by or working on behalf of the Commission may either be: (a) by electronic mail in accordance with the procedures adopted in this proceeding; (b) by facsimile; or (c) by overnight mail or messenger service. Whenever service of a document containing Protected Materials is made by overnight mail or messenger service, the Assigned ALJ shall be served with such document by the same means and at the same time.

4. Redaction of Documents. Whenever a Party files, serves, or provides in discovery a document that includes Protected Materials (including but not limited to briefs, testimony, exhibits, and responses to data requests), such Party shall also prepare a redacted version of such document. The redacted version shall enable persons familiar with this proceeding to determine with reasonable certainty the nature of the data that has been redacted and where the redactions occurred. The redacted version of a document to be filed shall be served on all persons on the service list, and the redacted version of a discovery document shall be served on all persons entitled thereto.

5. Designation of Reviewing Representatives. The Requesting Party shall provide written notice identifying its proposed Reviewing Representative(s) to the Disclosing Party before the Disclosing Party provides any Protected Materials to the Requesting Party’s Authorized Reviewers. The written notice shall include the information identified in this paragraph. If the Requesting Party decides to designate any additional Reviewing Representative(s) after the Requesting Party receives Protected Materials, the Requesting Party shall identify the additional
proposed Reviewing Representative(s) to the Disclosing Party before the Requesting Party provides Protected Materials to the additional Reviewing Representative(s). Within five (5) business days after receiving written notice of the identity of any Reviewing Representative, the Disclosing Party may provide the Requesting Party with a written objection to a specific Reviewing Representative stating the grounds for the objection. Any dispute concerning whether an identified person or entity is an appropriate Reviewing Representative shall be resolved through the dispute resolution procedures in Paragraph 10 of this Nondisclosure Agreement. If a Disclosing Party objects to a specific Reviewing Representative within five (5) business days after the Reviewing Representative is identified, the Requesting Party shall not provide any Protected Materials to the disputed Reviewing Representative until the Parties are able to resolve the dispute consistent with the dispute resolution procedures in Paragraph 10. Failure by the Disclosing Party to object within five (5) business days does not waive the Disclosing Party’s right to later object to the Reviewing Representative, even if Protected Materials has already been disclosed. However, further disclosure of Protected Materials would be stayed until the parties are able to resolve the dispute consistent with the dispute resolution procedures in Paragraph 10.

Reviewing Representative(s) have a duty to disclose to the Disclosing Party any potential conflict that puts the Reviewing Representative in violation of D.06-12-030, as modified by subsequent decisions of the Commission. A resume or curriculum vitae is reasonable disclosure of such potential conflicts, and should be the default evidence provided in most cases.

6. Nondisclosure Certificates. A Reviewing Representative shall not inspect, participate in discussions regarding, or otherwise be granted access to, Protected Materials unless and until he or she has first completed and executed a Nondisclosure Certificate, attached hereto as Appendix A, and delivered the signed Nondisclosure Certificate to the Disclosing Party. The Disclosing Party shall retain the executed Nondisclosure Certificates pertaining to the Protected
Materials it has disclosed and shall promptly provide copies of the Nondisclosure Certificates to Commission Staff upon request.

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15. **Interpretation.** Headings are for convenience only and may not be used to restrict the scope of this Nondisclosure Agreement.

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APPENDIX A TO MODEL NONDISCLOSURE AGREEMENT

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

[Insert Proceeding Caption] ) Docket No. XX-XX-XXX
_______________________________ )

NONDISCLOSURE CERTIFICATE

I hereby certify my understanding that access to Protected Materials is provided to me pursuant to the terms and restrictions of the Nondisclosure Agreement between [REQUESTING PARTY] and [DISCLOSING PARTY] in this proceeding, that I have been given a copy of and have read the Nondisclosure Agreement, and that I agree to be bound by it. I understand that the contents of the Protected Materials, any notes or other memoranda, or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with that Nondisclosure Agreement. I acknowledge that a violation of this certificate constitutes a violation of an order of California Public Utilities Commission.

Signed: _______________________

Name ________________________

Title: _________________________

Organization: __________________

Dated: ________________________
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<td>Dept of General Services</td>
<td>ORA</td>
<td>YEP Energy</td>
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